IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/07/2003

Coram

The Honourable Mr. Justice V. KANAGARAJ

Crl.O.P. No.22343 of 2003 and Crl.O.P. 22435 of 2003

S.B. Fazluddin ... Petitioner in Crl.
O.P. No.22343 of 2003

Md. Ansari ... Petitioner in Crl.
O.P.No.22435 of 2003
-Vs-

The State by
Dy. Superintendent
of Police,
S.I.T.C.B.C.I.D.
B-1 Police Station(Bazaar) ... Respondent in
Coimbatore. both Crl.O.Ps.

Petitions filed under section 482 Cr.P.C. praying for as
stated below.

For Petitioner : Mr. S.B. Fazluddin
(Party in person)
(Crl.O.P. No.22343 of 2003)

Mr. R. Sankara Subbu
(Crl.O.P. No.22435 of 2003)

For Respondent : Mr. A.N. Thambidurai,
Govt. Advocate (Crl.side)

:O R D E R
Criminal Original Petition No.22343 of 2003 has been filed
praying for direction permitting the petitioner to appear in S.C. No.2 of 20
02 on the file of the Special Sessions Judge for Bomb Blast Cases, Coimbatore
by himself and through his junior in his absence.

2. Crl.O.P. No.22435 of 2003 has been filed praying to set
aside the order dt.10.07.2003 in S.C. No.2 of 2000 on the file of the
Sessions Judge for bomb blast cases at Coimbatore.

3. Today, when the above matter was taken up for
consideration, learned counsel for the petitioners would submit that they have

been appointed as counsel to appear and defend the accused before the bomb blast Court at Coimbatore and accordingly they have been defending the accused; that they requested the learned Sessions Judge to have the assistance of their junior counsel during their absence and the said request was accepted by the learned Judge; that after their request was accepted, either they or their juniors appeared to defend the accused; that the present learned Judge, who took charge, passed a common order dt.10.07.2003 and cut off the remuneration to them without any reason; that the service of senior advocate is essential for proper and effective defence of his client; that the appearance by such senior advocate would be possible only through the assistance of his junior and hence they pray this Court to set aside the order dt.10.07.2003 .

4. Learned counsel for the petitioner would also cite two judgments the first rendered by the Honourable Apex Court reported in RANJAN DWIVEDI v. UNION OF INDIA ((1983) 3 S.C.C. 307) wherein in a writ petition (criminal), their Lordships, while dealing with the subject matter, examining the right of the accused to engage legal practitioner at State expenses for defence in the light of Articles 39A, 22(1), 21, 32 and 227 of the Constitution of India, have held that such rights are not enforceable by writ petition under Article 32 of the Constitution of India and the proper course would be to make an application under section 304(1) Cr.P.C. to the Court of Sessions for fixing the counsel and the amount of fee to be paid to him. But if the rules framed by the High Court regarding the fees payable to the lawyers are found to be insufficient, the Sessions Court may make a reference to the High Court for deciding sufficiency of the fees under Article 227 of the Constitution of India.

5. The next judgment submitted by the learned counsel for the petitioners is by a Division Bench of this Court reported in T. SUTHENDRARAJA v. STATE OF TAMIL NADU (1995 CRL.L.J. 1496) wherein it is held that independent accused should not only be represented by the counsel but also just, fair and reasonable fee should be paid to the counsel by the State. It is further held that appointment of prosecuting counsel and defence counsel is a different criteria. The principle of equal pay for equal work is not attracted. But considering the magnitude of the case vis-a-vis work load, the State Government directed enhancement of fees to the defence counsel taking into consideration of their experience at Bar. On such arguments, learned counsel would pray to allow both the petitions.

6. On the part of the learned Government Advocate appearing on behalf of the respondent, he would advance his arguments in adherence to the order passed by the learned Trial Judge in this regard dt.10.07.2 003 that only from out of panel of lawyers approved numbering 26 and on principle, no one from out of panel was chosen for being engaged by any accused on State Brief and some of these lawyers approved and had appointed by the said Court engaging them on State Brief to defend the accused were not at all in the habit of attending the day to day proceedings, the docket entries regarding their attendance before the Special court showing a very sorry state of affairs but only being represented by their junior lawyers, who at most of the times would only seek adjournments, as a result of which the very purpose of

constituting the Special Court for accepting the trial procedure being defeated and, therefore, there is every reason for the Special Court Judge expressing concern. Further more, the Special Judge has strongly viewed that it is only the senior counsel whose name was approved from out of the panel is entitled to the legal remuneration and not the junior, who is only helping the senior making his job easy and, therefore, the resentment shown in not permitting them to get the remuneration citing some previous instances cannot be justified and, therefore, the learned Government Advocate would end up his argument praying to dismiss both these petitions as devoid of merit confirming the order passed by the Special Judge, Bomb Blast Cases, Coimbatore.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel appearing for both, what could be gathered from the facts and circumstances of the case is that Crl.O.P. No.22343 of 2003 has been filed by the counsel who is on record drawn from the panel of lawyers numbering 26 and approved by the Government as State Brief Advocates and the petitioner in the other petition is an accused in the Bomb Blast case who is being defended by Mr. R. Sankarasubbu, Advocate on State Brief and both these petitioners have come forward to testify the validity of the order dt.10.07.2003 passed by the learned Sessions Judge for Bomb Blast Cases, Coimbatore, regarding the role played by the State Brief Advocates, the appearance of the junior lawyers representing the State Brief Advocates and regarding the fixation of their remuneration for the month of June, 2003 and seeking to set aside the same on grounds broughtforth in the above Crl.O.Ps.

8. No mention need be necessary that it is a special Court constituted to deal with a sensitive subject wherein the number of accused, the number of witnesses and that of the documents are innumerable and unless on day today basis if the trial is not held, it is difficult to deliver the judgment in a time bound manner as a result of which the State constituted the Court of Special Sessions Judge and permitted by G.O. to appoint State Brief Advocates from out of the panel prepared numbering 26 out of whom the petitioner in Crl.O.P. No.22343 of 2 003 and the petitioner's counsel in other Crl.O.P. No.22435 of 2003 have been drawn.

9. The grievance of the petitioners seem to be regarding their personal attendance and that of their associate advocates representing them and appearing on their behalf and, the remuneration to be paid from out of the funds of the State. So far as the appearance before the Special Court for Bomb Blast Cases, Coimbatore by the State Brief Advocates is concerned, though there cannot be any compulsion that on each and every hearing of the case, they ought to be present, still they are specially appointed for defending the accused in the said case on State Brief being paid from out of the State funds, no fault could be found in the expectation of the Presiding Officer of the Special Court for their appearance on all hearings for the effective conduct of the day to day proceedings in defence of their clients. However, the right of the State Brief Advocates to require the able assistance of their associate advocates to their choice cannot also be denied. But in the said process, the expectations of both the Court and the clients for the learned State Brief counsel to appear and himself conduct the case, whenever

the case passes through crucial stages is quite natural and if the situation is not realised, it cannot be said to be healthy for the judiciary and the bar. In the whole process for the conduct of the trial till the delivery of judgment if all those participants in their own angle contribute their share in full realisation of their duties and responsibilities, there cannot be any precipitation of such sort as one that has erupted in the subject in hand and, therefore, there cannot be any hard and fast rule laid down regarding these matters since the ultimate aim is to render better and speedy justice.

10. Therefore, this Court is of the belief that all the participants in the process of the conduct of the trial in the Bomb Blast Cases, Coimbatore, particularly, the co-operation of the learned State Brief lawyers since being of vital importance in their own interest and in the interest of the clients, whom they defend, needless to mention the ultimate interest of justice will be better served.

11. Coming to the point of remuneration, there cannot be a second thought regarding the remuneration, which has been already fixed for the State Brief lawyers and the controversy is only regarding the payment of the remuneration for the junior lawyers, who represent the State Brief Advocates and the law covering the subject is under Section 304(1) Cr.P.C., which only gives enormous powers for the particular Court of Sessions Judge, who conducts the trial and no doubt, the High Court can also, with the previous approval of the State Government make rules providing for the selection of the pleaders, the facilities to be allowed to such pleaders and the fees payable to such pleaders and therefore, subject to what is contemplated under this provision of law and falling in line with Article 227(1) of the Constitution of India and as laid down by the Honourable Apex Court as per its Judgment reported in 1983 (3) SCC 307 (RANJAN DWIVEDI v. UNION OF INDIA) that the Special Court of Sessions may make a reference to the High Court for deciding sufficiency of fees or for the fixation of remuneration for the junior counsel under Article 227 of the Constitution of India and, therefore, closing of the chapter as it has been done in the order of the Special court, Bomb Blast Cases, Coimbatore regarding the fixation of any fee for the juniors, who regularly appear either along with State Brief Advocates or even in their absence is not desirable and falling in tune with the legal suggestions and the law covering the subject as declared by the Honourable Apex Court, it is always open for the Special court, Bomb Blast Cases to make a reference to the High Court for deciding either the payment to be made or deciding the quantum of the same even to the junior lawyers, which could be considered by the High court in the manner provided for under Section 304(1) Cr.P.C. and under Article 227 of the Constitution of India.

In result, subject to the above observations and directions, it is only desirable to dispose of both the above Criminal Original Petitions and the same are ordered accordingly.

Index:Yes.
Internet:Yes.

ssa/sl

To

1. The Special Sessions Judge
for Bomb Blast Cases,
Coimbatore.

2. The Deputy Superintendent of Police,
S.I.T.C.B.C.I.D.
B-1 Police Station(Bazaar)
Coimbatore.

3. The Public Prosecutor,
High Court, Madras.